HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 1290 of 2003

Vinod Kumar S/o Sekant Lal

VS

State of U.A.

Approved for reporting

~~Not approved for reporting~~

Date of decision: 03.03.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1290 of 2003 (S/S)

1. Vinod Kumar s/o Sekant Lal Arya
   Village Ratura, District Rudraprayag
2. Km. Suman d/o Mohan Singh
   Village & Post Rudraprayag,
   District Ruderprayag ..... Petitioners

Versus

1. State of Uttaranchal through Secretary
   Revenue, govt. of Uttaranchal
2. Commissioner, Garhwal Division,
   Pauri Garhwal
3. District Magistrate, Pauri ..... Respondents.

Sri I.D. Paliwal, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 3.3.2006

Hon'ble Rajesh Tandon, J

Heard Sri I.D. Pliwal counsel for the petitioners and Standing Counsel for the respondents.

By the present writ petition, the petitioners have prayed for the issue of a writ of mandamus commanding the respondents to regularize the petitioners on the post of Wasil Baqi Nawis and not to give them artificial break.

Brief facts giving rise to the present writ petition are that the petitioners are working as Wasil Baqi Nawis in District Rudraprayag. The petitioner no. 1 has been working since 29.10.2001 and respondent no. 2 has been working since 6.11.2001. According to the petitioners they have worked as Wasil Baqi Nawis since 2001 continuously but the respondents are giving repeated and deliberate breaks in the service of the petitioners in order to break the continuity of service on account of the fact that the job of the petitioners is of seasonal character, while in the hill District of Uttaranchal they work throughout the year. Such an attitude of the respondent is causing immense hardship to the petitioner.

Petitioner has submitted that on 7th August. 2000, a Circulation was made for appointment of regular Amins under 35% quota system. The said Circular is quoted below:

> ***विषयः ३५ प्रतिशत सीजनल संग्रह अमीनों की नियमित नियुक्ति के संबंध में।***
>
> *उत्तर प्रदेश कलैक्शन अमीन सेवा नियमावली (पांचवा संशोधन) १९९२ के नियमक ५-१ (ख) के अनुसार संग्रह अमीनों के रिक्त पदों में से ३५ प्रतिशत पदों पर सामयिक संग्रह अमीनों ....ने की कार्यवाही नियम ५-१ (स) व (क) (ख) में उल्लिखित शर्तो के अधीन जिला स्तर पर की जानी है जिसके लिए निम्न प्रारूप पर सूचना एक सप्ताह के अन्दर इस सीजनल संग्रह अमीनों के संबंध में ही भेजी जावे जिनकी १४०६ कस्बों में ४ फसली अथवा उससे अधिक समय हो चुका हो। यहां यह भी स्पष्ट करना है कि प्रस्तुत किया जाने वाला विवरण पूर्व प्रेषित विवरणो के आधार पर सत्य हो । कार्य एवं आयंकर के संबंध में पृथक से टिप्पणी गोपनीय रूप से प्रषित की जाय।"*

Petitioners have submitted his request for the appointment as regular Wasil Baqi Niwas amongst 35% reserved posts, but the claim of the petitioners was not considered inspite of their representations made from time to time and as such, the petitioners have filed the present writ petition claiming their regularization.

Counter affidavit has not been filed by the State despite several opportunities have been given to the respondents.

Petitioner have referred the Rules known as U.P. Collection Amins Service Rules, 1974, where the source of recruitment has been defined under Rule 5, the same is quoted below:

> ***"5. Source of recruitment:****(1) Recruitment to posts in the ordinary grade of the service shall be made on the result of competitive examination as provided in Part V of these rules:*
>
> *Provided that subject to availability of suitable candidates, up to fifteen per cent of the vacancies shall be filled by promotion from amongst such substantively appointed collection peon:*
>
> *(a) who have passed at least High School Examination of the Board of High School and Intermediate Education, Uttar Pradesh or an Examination recognized by the Government as equivalent thereto; and*
>
> *(b) who have worked in the Collection Organisation of the Revenue Department for a period of at least six Fasals:*

Provided further that thirty-five per cent vacancies shall be filled by selection from amongst such Seasonal Collection Amins-

(a) who have worked satisfactorily for a least four Fasals;

(b) whose age on the first day of July of the year in which selection is made does not exceed 45 years:

Provided also that if suitable candidates are not available, remaining vacancies shall be filled by general candidates through direct recruitment."

Learned counsel for the petitioners has referred the judgment of the Apex Court in the case of State of U.P. Vs Chandra Prakash Pandey & others reported in JT 2001 (4) SC 145, where the Apex Court has treated the Kurk Amins, who are appointed on commission basis, to be the holder of the Civil posts.

Learned counsel for the petitioners has also referred the judgment of the Hon'ble Allahabad High Court in writ petition No. 9557 of 1997 in the case of Umaro Singh & others Vs State of U.P. & others, wherein the Hon'ble Allahabad High Court has held as under:

"It …….that the …in the hills is different from that in plains of U.P. The patwari was revenue official equivalent to Lekhpal but his powers were wider since they include police powers. Hence, the decision of this court relating to seasonal collection Amins the plains areas of U.P. cannot be applicable to the hill areas. In

the hill areas, as alleged in the petition, the seasonal Collection Amins are doing exactly the same work as the Collection Amins, unlike in the plaints. Hence, there is nothing "Seasonal" about the work of Seasonal Collection Amins. In fact, the district Magistrate, Nainital has been repeatedly writing to the higher authorities in this connection vide annexure 1 and 2 to the writ petition. Similarly, the Seasonal Collection Peons are doing the same work as regular collection Peons.

In view of the un-rebitted allegations in the petition, I am of the opinion, that this petition deserves to be allowed. Since the petitioners have been performing same work of the regular collection Amin and regular Collection Peon, I direct that they shall be given the same salaries, allowances and other benefits and other facilities as regular collection Amins and Collection Peons, as the case may be, on the principle of equal pay for equal work. The State Government is further directed to take a decision of the recommendation of the district Magistrate, Nainital for creation of posts (Copies of which are Annexure 1 & 2 to the writ petition) expeditiously and till then the services of the petitioners shall be continue without any

The petition is allowed. No order as to costs.

Similar matter came up for consideration before this Court in writ petition No. 4527 of 2001 (S/S) in the case of Inder Singh & others Vs State of Uttaranchal & others, wherein

this Court, after relying upon the judgment of Umroa Singh (supra) has held as under:

> *"From the above it can be said without doubt that the facts of the instant writ petition are not at variance and the petitioners having worked as Seasonal Collection Amins for about 11 years continuously except for same artificial breaks they could not have been denied the benefit of the directions given in the afore-mentioned writ petitions by the Allahabad High Court. An attempt was made by the learned Standing Counsel to defend the inaction on the part of the respondents by submitted that the performance of the petitioners was not satisfactory and therefore their cases for regularization were not considered. Nothing has been brought on record to justify the plea and I am not inclined to accept that the petitioners were made to work for such a long period even though their work or conduct was unsatisfactory. The stand taken up by the respondents is nothing but only a false pretext to deprive the petitioners from getting the benefits of the notification dated 23.10.1992 under the relevant rules of 1974 and thereby the deny them equality of law in violation of the mandate of Articles 14 and 16 of the Constitution of India."*

A perusal of the aforesaid facts clearly indicated that the discriminatory treatments are being given the Seasonal Collection Amins. Articles 38 and 39(a) of the Constitution of India provides that the State Shall strive to promote the welfare of the people by securing and protecting as affectively as it may

the social order in which justice, social, economic and political protection can be given to the people. Article 38 and 39(a) of the Constitution of India are quoted as below:

> ***"38. State of secure a social order for the promotion of welfare of the people*** *– (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which, justice, social, economic and political, shall inform all the institutions of the national life.*
>
> *(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst group of people residing in different areas or engaged in different vacations.*
>
> ***39. Certain principles of policy to be followed by the State-*** *The State shall in particular, direct its policy towards securing-*
>
> *(a) that the citizens, men and women equally, have the right to an adequate means of livelihood."*

Similarly in the case of D.S. Nakara and others Vs Union of India reported in AIR 1983 Supreme Court 130, where the concept of social justice has been laid down by the Apex Court, relevant observations of which are quoted below:

> *"65. That is the end of the journey. With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old*

men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria; 'being in service and retiring subsequent to the specified date' for being eligible for the liberalized pension scheme and thereby dividing a homogenous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalized pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalized pension scheme of being in service on the specified date and retiring subsequent to that date in impugned memoranda, Exhibits P-1 and P-2 violates Article 14 and is unconstitutional and is struck down."

The Hon'ble Apex Court in the case of Kapil Hingorani has also emphasised for improving the methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, wherein paragraph 50 of the judgment, the term "life" has been defined relying upon the judgment of Field, J. in Munn V. Illinois reported in 1877 (94) US 1131, as under:

"Paragraph – 50: The term 'life' used in Article 21 of the Constitution of India has a wide and far reaching concept. In includes livelihood and so many other facets thereof. 'Life', as observed by Field, J. in Munn V. Illinois

[1877(94)US 1131] means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and facilities by which life is enjoyed. [See Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and others [1983(1) SCC 124] and Olga Tellis and others Vs Bombay Municipal Corporation and others [1985(30 SCC 545]."

It is not disputed that the Seasonal Amins/Wasil Baqi Nawis are working for the last several years and yet, they have not been categorized as regular Amins.

In the case of State of Haryana Vs Piara Singh reported in 1992(4) SCC 118, the Hon'ble Apex Court has laid emphasis on the necessity and requirement to regularize the casual employees in the following words:

"So far as the work-charged employees and the casual labor are concerned, the effort must be to regularize them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell – say two or three years – a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with empathy for the person. As has been repeatedly stressed by this Court,

security to tenure is necessary for an employee to give his best to the job."

In another writ petition bearing No. 3320 (S/S) of 2001, the following observations have been made:

Learned counsel for the petitioner submits that the petitioner is seasonal collection Amin and in view of the circular issued by Board of Revenue he collected 70% of the demand which were submitted to him, therefore, he was entitled to the considered in view of the explanation appended to Rules, 1974 and as amended in the year 1992.

If this fact is correct and the petitioner is eligible according to Rule, the opposite parties are directed to consider the case of the case petitioner for appointment as regular collection Amin under 35% quota to be filled within a period of one month from the date of production of certified copy of this order. the petitioner shall be allowed to continue till his case for appointment as regular collection Amin is considered and if work and post is available and in case the Commissioner has given sanction for appointment of the Seasonal Collection Amins."

The petitioner have submitted that similarly situated candidates Sri Makanu Koli, Sri Gajpal Lal and Smt. Sushma were absorbed in the District Establishment as Junior Clerks vide order dated 25th September 2001, therefore, the petitioners are also entitled to be absorbed as Junior Clerk in the vacant

posts in Collectorate or other departments in the District Establishment.

For the reasons narrated above, writ petition is to be disposed of with the appropriate directions to the respondents.

In view of above, a writ a mandamus is issued directing the respondents to decide the claim of the petitioners for their requlariza tion/absorption in the Revenue Department or in District Establishment against suitable vacant posts, in the light of the observations made above, within a period of one month from the date of receipt of the certified copy of this order. The petitioners shall be allowed to work continue without any artificial break till their regularization.

Accordingly, the writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

Dated: 3.3.2006
*Dhyani